113-332

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1083.

THE MAYOR AND ALDERMEN OF THE CITY OF QUINCY, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES EX RELATIONE PETER A. H. JACKSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

BAR ASSOCIATION

FILED OCTOBER 15, 1884.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Writ of Error.*

UNITED STATES OF AMERICA:

The President of the United States to the judges of the circuit court of the United States for the southern district of Illinois, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court of the United States for the southern district of Illinois, before you, between The United States *ex relatione* Peter A. H. Jackson, plaintiff, and The Mayor and Aldermen of the City of Quincy, (Illinois,) defendants, as consolidated with two certain other causes, a manifest error hath happened, to the great damage of the said defendants, The Mayor and Aldermen of the City of Quincy, as by their complaint appears:

We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday

2 of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield, in said southern district of Illinois, this 9th day of September, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the one hundred and ninth year.

[SEAL.]

J. A. JONES,
Clerk of Circuit Court of the United States for the Southern District of Illinois.

2½ [Endorsed:] Supreme Court of the United States. The Mayor and Aldermen of the City of Quincy, plaintiffs in error, *vs.* The United States *ex rel.* Peter A. H. Jackson, as consolidated. Writ of error. Filed September 9th, 1884. J. A. Jones, clerk.

3 *Placita.*

Pleas in the circuit court of the United States of America, within and for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit of the United States, *pro tempore* sole judge of said court, on Monday, the 23d day of June, at the June term of said court, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the one hundred and eighth year.

J. A. JONES, *Clerk.*

THE UNITED STATES OF AMERICA on the Relation of PETER A. H. JACKSON
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF QUINCY, (ILLINOIS,) Composing the City Council of said City.

G. No. 6890. Mandamus.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

4 The United States of America, on the relation of Peter A. H. Jackson, a citizen and resident of the State of New York, put in their place Carl E. Epler, Esq., the attorney for said relator, against the City Council of the City of Quincy, (in the State of Illinois,) composed of the mayor and aldermen of said city, in a plea of mandamus.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 23d day of June, in the year of our Lord one thousand eight hundred and eighty-four, came the said relator, Peter A. H. Jackson, by his said attorney, and filed in the office of the clerk of said court the following petition for mandamus in said foregoing entitled cause, to wit:

Petition for Mandamus.

UNITED STATES OF AMERICA, *Southern District of Illinois,* } *ss:*

In the Circuit Court of the United States for said District. Of June Term, A. D. 1884.

To the honorable the judges of the circuit court of the United States, in & for said district:

The United States of America, at the relation of Peter A. H. Jackson, a citizen & resident of the State of New York, brings this petition for mandamus against the City Council, composed of
5 the mayor & aldermen of the city of Quincy, a municipal corporation created by, & existing under, the laws of the State of Illinois, & a citizen thereof, & located within said southern district of Illinois.

Relator avers that at the present June term of said court, A. D. 1884, to wit, on the 4th day of June, 1884, in an action of assumpsit, by the consideration & judgment of this court, he recovered a judgment against said city of Quincy for the sum of nine thousand five hundred & forty-six $\frac{24}{100}$ dollars damages, and ——— dollars, costs of said suit, as will appear from the records of said court, to which reference is hereby made, & which is hereby made a part hereof; that said judgment is still in full force & effect, & in no way appealed from, satisfied, annulled, or reversed; that relator caused a demand for him to be made upon said city council of said city of Quincy to pay said judgment, with interest thereon, at the rate of six per cent. per annum, from the time of its rendition, and the costs

of said suit; yet said city council, the corporate authorities of said city of Quincy, have neglected & refused to pay the same, or any part thereof, by the levy of taxes or otherwise.

That said judgment was had upon certain coupons of certain bonds of said city of Quincy, duly issued by said city in payment of its subscription to the capital stock of the Mississippi & Missouri River Air Line Railroad Company, and that said bonds recite, among other things, that they are issued under & by virtue of an order of
6 the city council of the city of Quincy, passed August 7, A. D. 1868, & of an act of the General Assembly of the State of Illinois, entitled "An act to legalize the acts of the city council of the city of Quincy, Illinois, in subscribing to the capital stock of the Mississippi and Missouri River Air Line Railroad Company," approved March 27, 1869; that said bonds were duly issued by said city of Quincy in, to wit, the year 1870, in pursuance of the laws of the State of Illinois, & that it therefore became the duty of the said city of Quincy to provide for the payment of the interest coupons attached to the same as they became due & payable.

Relator further avers that there are no funds in the treasury of said city out of which said judgment can be paid.

That the special charter of said city of Quincy was amended by act of the General Assembly of the State of Illinois, entitled "An act, amendatory of the several acts relating to the city of Quincy, to provide for raising a revenue therein and regulating costs arising under the charter & ordinances of said city," approved Feb. 14, 1863, & in & by which act, among other things, it was provided that there should be levied on all real & personal property within the limits of said city, to pay the debts & meet the general expenses of said city, not exceeding fifty cents on each one hundred dollars per annum, on the annual assessed value thereof.

7 That an act of the General Assembly of the State of Illinois, entitled "An act in relation to the rate of taxation in cities, villages, & incorporated towns," approved & in force May 30, 1881, gave said city of Quincy power to levy on its taxable property for all corporate purposes, other than for schools & the interest on its registered bonds, not exceeding in any year the rate of one per cent. of the equalized assessed valuation of such taxable property.

Relator further avers, on information & belief, that the revenues of said city for its fiscal year ending March 31, 1885, to accrue from the taxes it may legally levy under the act last aforesaid, & from its licenses and other sources of revenue, after paying therefrom its necessary current expenses for said year, and the sum of about twenty thousand dollars ($20,000), & any surplus then remaining over & above necessary current expenses, on certain other judgments had against it in this court on another series of its bonds, styled debt-funding bonds, in pursuance of certain writs of mandamus issued out of said court (as will more fully appear from the records of said court, to which, for further certainty, reference is hereby made, & which are hereby made a part hereof), will be insufficient to pay relator's judgment, interest, and costs aforesaid.

Relator therefore avers that he is entitled to have said city levy a special tax, in addition to all other taxes that it may levy by
8 law, sufficient in amount to satisfy his judgment, interest, and costs, as aforesaid.

And relator further states that he is entirely without remedy in the premises, unless it be afforded by this honorable court by its writ of mandamus.

Wherefore, in consideration of the premises, relator prays this court to take cognizance of this his petition, & make the city council, composed of the mayor & aldermen of said city of Quincy, defendants hereto, & grant that said city be summoned to answer under the rules of this court, & upon final hearing grant a peremptory writ of mandamus against said city council, composed of the mayor and aldermen of said city, requiring & commanding them, as said city's corporate authorities, at the time fixed by law for the levy of taxes for the fiscal year ending March 31, 1885, & on or before the second Tuesday in August, 1884, to convene in their corporate capacity, at a regular or special meeting duly held, to levy on the taxable property in said city, & to certify according to law, to the county clerk of Adams county, in said State, to be duly extended & collected with the taxes for said year, a sum sufficient to pay and satisfy said judgment, including interest thereon from the date of its rendition until it may be paid at the rate of six per cent. per annum, with the costs of the assumpsit suit in which said judgment was recovered, and the costs of these proceedings, & that in making said levy they take into account &
9 allow for the costs of collection & delinquent taxes, and that said levy, when so made & collected, be kept apart & appropriated as a special fund in trust for the payment of such judgment, interest, & costs, and for no other purpose whatever; & that as soon as collected, & on or before the first day of June, 1885, said special tax be applied to said payment, & that said city then cause said judgment & interest to be paid to relator's attorney of record, & the costs aforesaid to the clerk of this court.

And relator prays for such other & further relief as the nature of his case may require, & to your honor shall seem meet. As in duty bound relator will ever pray.

PETER A. H. JACKSON, *Relator,*
By CARL E. EPLER,
His Attorney-at-Law.

STATE OF ILLINOIS, }
Adams County, } *ss:*

I, Carl E. Epler, make oath & say: That I am the attorney of relator in the above petition, & was the attorney of plaintiff in the cause wherein said relator recovered his said judgment; that I have read the foregoing petition; that the allegations thereof are better known to me than to relator; & that I believe the same to be true.

CARL E. EPLER.

Subscribed & sworn to by Carl E. Epler before me, this 13th day of June, A. D. 1884.

[L. S.] GEO. A. ANDERSON,
Notary Public.

10 (Endorsed:) Filed June 23, 1884. J. A. Jones, clerk.

And thereupon, to wit, on the day last aforesaid, came the defendants, The Mayor and Aldermen of said City of Quincy, by their attorney, and filed in said clerk's office their demurrer to the petition filed in said cause; which said demurrer is in the words and figures following, to wit:

Demurrer to Petition.

UNITED STATES OF AMERICA, *Southern District of Illinois,* } *ss:*

In the Circuit Court of the United States for said District. June Term, A. D. 1884.

UNITED STATES *ex rel.* PETER A. H. JACKSON *vs.* MAYOR & ALDERMEN OF CITY OF QUINCY. } Demur. to Petition.

And now come said respondents, by their attorney, Geo. A. Anderson, and say that said petition in the above-entitled cause is insuffiin law, and demur thereto, and pray judgment, &c.

GEO. A. ANDERSON,
City Attorney of Quincy, for Respondents.

(Endorsed:) Filed June 23 1884. J. A. Jones, clerk.

11 And thereupon, to wit, on the day last aforesaid, being Monday, and at the June term of said court, said cause was consolidated with two certain other suits in mandamus pending in said court, wherein The Mayor and Aldermen of the City of Quincy, Illinois, are defendants. Whereupon the following proceedings were had in said cause, as consolidated, on the day last aforesaid, and entered of record in said court, to wit:

Final Order for Mandamus.

UNITED STATES *ex rel.* CHARLES MORAN *vs.* MAYOR AND ALDERMEN OF CITY OF QUINCY. } No. 6889. Mandamus.

UNITED STATES *ex rel.* PETER A. H. JACKSON *vs.* CITY COUNCIL OF CITY OF QUINCY. } No. 6890. Mandamus.

UNITED STATES *ex rel.* ISAAC H. ARTHUR *vs.* CITY COUNCIL OF CITY OF QUINCY. } No. 6891. Mandamus.

And now come the parties to the above-entitled causes, by their respective attorneys, and upon motion of defendants thereto, by their

attorney, George A. Anderson, city attorney of said city of
12 Quincy, upon due consideration, it is hereby ordered and adjudged, that said causes numbered 6891 and 6889, respectively, be consolidated with the above-entitled cause numbered 6890, and that said causes, so consolidated together, hereafter proceed as one cause.

And said consolidated cause, numbered 6890, now coming on to be heard upon the petitions of relators therein filed, and the demurrers of defendants thereto, this court, after hearing arguments of counsel, and being fully advised in the premises, upon due consideration thereof, doth order and adjudge that said demurrers be, and are hereby, overruled; and said defendants abiding by said demurrers and refusing to answer, the allegations of said petitions are taken as true, and the court doth find that Peter A. H. Jackson obtained a judgment in this court against said city of Quincy, on the 4th day of June, A. D. 1884, for the sum of nine thousand five hundred and forty-six and $\frac{24}{100}$ dollars ($9,546.24), and costs of suit, taxed at 84.55 dollars; and that the said Isaac H. Arthur recovered a judgment in this court against said city of Quincy, on the 4th day of June, A. D. 1884, for the sum of eighteen hundred and twenty-eight and $\frac{92}{100}$ dollars ($1,828.92) and costs of suit, taxed at 32.55 dollars; and that said Charles Moran, on the 19th day of January, A. D. 1884, obtained a judgment in this court for the sum of three thousand nine hundred and forty-five and $\frac{60}{100}$ dol-
13 lars ($3,945.60) and costs of suit, taxed at forty-seven dollars and five cents ($47.05); that all of which said judgment and costs remain wholly due and unpaid, and that defendants refuse to pay the same.

The court doth therefore order and adjudge that a peremptory writ of mandamus be issued herein, as prayed for in and by the several petitions in said consolidated cause, directed to and commanding the said city council of said city of Quincy, composed of the mayor and aldermen of said city, as follows, to wit:

That you, the city council of said city, composed of the mayor and aldermen as aforesaid, as said city's corporate authorities, within the time fixed by law for the levy of taxes for the fiscal year ending March 31, 1885, and on or before the second Tuesday in August, 1884, do convene in your corporate capacity, at a regular or special meeting duly held, and do by proper ordinance levy on the taxable property in said city a sum sufficient to pay and satisfy said judgments, including interest therein from the date of their rendition until they may be paid, at the rate of six per cent. per annum, with the costs of the assumpsit suits in which said judgments were covered, and the costs of these proceedings; and that in making said levy you take into account and allow for the cost of collec-
14 tion and delinquent taxes, and that you do cause said tax levy so made, to be duly certified within the time required by law to the county clerk of Adams County, in said State, to be duly extended and collected with the taxes for said year 1884, and that you do thereupon set apart and appropriate said tax levy as a

special fund in trust, for the payment of such judgments, interest, and costs, and for no other purpose whatever; and that as soon as collected, and on or before the first day of June, 1885, you do cause said special tax to be applied to said judgments, and that you do then cause said judgments and interest to be paid to said relator's attorneys of record, respectively, and the costs aforesaid to the clerk of this court.

And, on motion of defendants, a writ of error to the Supreme Court of the United States is allowed, but not to operate as a supersedeas, on the defendants' entering into bond to the relators in the penalty of five hundred dollars, conditioned as the law directs, with security to be approved by the court, within sixty days from this date.

And afterwards, to wit, on the 23d day of August, in the year last aforesaid, came the defendants, by their attorney, and filed in said clerk's office their bond on writ of error in said cause,
15 which bond was approved by the court, and is in the words and figures following, to wit:

Bond on Writ of Error.

In the Circuit Court of the United States in and for the Southern District of Illinois. June Term, A. D. 1884.

MAYOR & ALDERMEN OF THE CITY OF QUINCY, Pl'ff in Error, *vs.* U. S. *ex rel.* PETER A. H. JACKSON, Def't in Error.	No. 6890. In Error.

Know all men by these presents, that we, the city of Quincy, James Jarrett, Harris Swimmer, E. H. Turner, J. B. Shawgo, James M. Balthrope, J. Parkhurst, Alois Gatz, J. H. Vanden Boom, are held and firmly bound unto the above-named Peter A. H. Jackson, in the sum of five hundred dollars, to be paid to the said Peter A. H. Jackson, his heirs or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, successors, executors, and administrators, firmly by these presents.

In witness whereof, the city of Quincy has caused its corporate seal to be hereto affixed, and attested by the signature of its
16 mayor and comptroller, and in witness whereof, James Jarrett, Harris Swimmer, E. H. Turner, J. B. Shawgo, James M. Balthrope, Alois Gatz, J. Parkhurst, J. H. Vanden Boom, have hereunto set their hands and seals as sureties. Done this 22d day of August, A. D. 1884.

Whereas the above named Mayor and Aldermen of the City of Quincy have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States in and for the southern district of the State of Illinois:

Now, therefore, the condition of this obligation is such, that if the above-named Mayor and Aldermen of the City of Quincy shall prosecute their said writ of error to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

[SEAL.] JAS. JARRETT, *Mayor.*
ALBERT DEMARN,
City Comptroller.
JAS. JARRETT. [SEAL.]
ALOIS GATZ. [SEAL.]
J. PARKHURST. [SEAL.]
J. M. BALTHROPE. [SEAL.]
H. SWIMMER. [SEAL.]
E. H. TURNER. [SEAL.]
J. H. VANDER BOOM. [SEAL.]

17 Approved.
S. H. TREAT, *Dist. Judge.*

(Endorsed:) Filed August 23d, 1884. J. A. Jones, clerk.

18 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *Southern District of Illinois,* } ss:

In the Circuit Court for said District.

I, John A. Jones, clerk of the circuit court of the United States within and for the southern district of Illinois, do hereby certify that the foregoing is a true and correct copy of all the papers filed in the proceedings thereon had (being a complete transcript) in a certain cause lately pending in said court, wherein The United States on the relation of Peter A. H. Jackson, are plaintiffs, and The Mayor and Aldermen of the City of Quincy, (Illinois,) are defendants, as consolidated, &c., as fully as the same appear of record and on file in my said office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Springfield, in said district, this 8th day of October, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the one hundred and ninth year.

[SEAL.] JNO. A. JONES, *Clerk.*

19 *Citation.*

Supreme Court of the United States.

The United States of America to Peter A. H. Jackson, Charles Moran, and Isaac H. Arthur, Greeting:

You, and each of you, are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a

writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein The Mayor and Aldermen of the City of Quincy, (Illinois,) are plaintiffs in error, and The United States of America *ex relatione* Peter A. H. Jackson, Charles Moran, and Isaac H. Arthur, are defendants in error, (consolidated cause,) to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy and full justice done to the parties aforesaid in that behalf.

Witness the Hon. S. H. Treat, district judge of the United States for the southern district of Illinois, at Springfield, in said district, this 9th day of September, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the one hundred and ninth year.

S. H. TREAT,
District Judge of United States for South'n District of Illinois.

20 I hereby waive formal service of the within citation, and acknowledge and accept service of the same for and on behalf of the within-named Peter A. H. Jackson, this 15th day of September, A. D. 1884.

CARL E. EPLER,
Att'y for Peter A. H. Jackson.

[Endorsed:] Supreme Court of United States. The Mayor and Aldermen of City of Quincy, composing, &c., plaintiffs in error, *vs.* The United States *ex rel.* Peter A. H. Jackson, Charles Moran, and Isaac H. Arthur. Citation.

Endorsed on cover: S. Illinois C. C. U. S. No. 1083. The Mayor and Aldermen of the City of Quincy, plaintiffs in error, *vs.* The United States *ex relatione* Peter A. H. Jackson. Filed 15th October, 1884.

113-332

JAN 9 1885

IN THE

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, A. D. 1884.

No. 1083.

THE MAYOR AND ALDERMEN OF THE CITY OF QUINCY,

Plaintiffs in Error,

vs.

THE UNITED STATES, *Ex-Relatione*
PETER A. H. JACKSON.

In Error to the Circuit Court of the United States for the Southern District of Illinois.

BRIEF OF PLAINTIFF IN ERROR.

GEO. A. ANDERSON, *City Attorney.*

IN THE

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, A. D. 1884.

THE MAYOR AND ALDERMEN OF THE CITY OF QUINCY,

Plaintiffs in Error,

vs. } *No. 1083.*

THE UNITED STATES, *Ex-Relatione*
PETER A. H. JACKSON.

In Error to the Circuit Court of the United States for the Southern District of Illinois.

STATEMENT OF THE CASE.

This action was brought in the lower court on petition by the relator, the defendant in error, for a mandamus against the plaintiffs in error.

The petition alleges that the relator had recovered a judgment, in assumpsit, against the City of Quincy, which the city had not paid and from which it had not appealed.

That a demand had been made upon the city for the payment of said judgment, but the payment had been neglected and refused.

That the judgment was had upon certain coupons of certain bonds of said city, duly issued by the city in payment of its subscription to the capital stock of the Mississippi and Missouri River Air Line Railroad Company.

That said bonds recite that they are issued under an order of the City Council, passed August 7th, 1868, and an act of the General Assembly of the State of Illinois, approved March 27th, 1869, legalizing the act of the said city of Quincy in voting said subscription.

That there are no funds in the city treasury of said city to pay said judgment.

That the special charter of said city, as amended in 1863 by the act of the Legislature of said State, provided that there should be levied on all real and personal property, within the limits of said city, to pay the debts and meet the general expenses of said city, not exceeding fifty cents on each one hundred dollars per annum, on the annual assessed value thereof.

That the Legislature of said State in 1881 gave said city power to levy on all its taxable property, for all purposes other than for schools and the interest on its registered bonds, not exceeding in any year the rate of one per cent. of the equalized assessed valuation of such taxable property.

That the revenues of said city, from every source, for the year ending March 31st, 1885, after paying the necessary running expenses of said city, and the sum of twenty thousand dollars, and the surplus above the running expenses of said city upon certain other judgments, in pursuance of certain mandamus writs, will not be sufficient to pay relator's judgment.

That relator is without remedy except by writ of mandamus.

Relator then prays for a judgment for a special tax against said city, "in addition to all other taxes that it may levy by law, sufficient in amount to satisfy his judgment, interest and cost." (See Record, p. 2, 3 and 4.)

To this petition the defendants in error filed a general demurrer. (Record, p. 5).

The court overruled the demurrer and, the parties abiding their demurrer, granted a peremptory writ of mandamus, allowing in said order this writ of error. (Record, p. 7).

The cause is now brought here for review on writ of error.

That a demand had been made upon the city for the payment of said judgment, but the payment had been neglected and refused.

That the judgment was had upon certain coupons of certain bonds of said city, duly issued by the city in payment of its subscription to the capital stock of the Mississippi and Missouri River Air Line Railroad Company.

That said bonds recite that they are issued under an order of the City Council, passed August 7th, 1868, and an act of the General Assembly of the State of Illinois, approved March 27th, 1869, legalizing the act of the said city of Quincy in voting said subscription.

That there are no funds in the city treasury of said city to pay said judgment.

That the special charter of said city, as amended in 1863 by the act of the Legislature of said State, provided that there should be levied on all real and personal property, within the limits of said city, to pay the debts and meet the general expenses of said city, not exceeding fifty cents on each one hundred dollars per annum, on the annual assessed value thereof.

That the Legislature of said State in 1881 gave said city power to levy on all its taxable property, for all purposes other than for schools and the interest on its registered bonds, not exceeding in any year the rate of one per cent. of the equalized assessed valuation of such taxable property.

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That relator is without remedy except by writ of mandamus.

Relator then prays for a judgment for a special tax against said city, "in addition to all other taxes that it may levy by law, sufficient in amount to satisfy his judgment, interest and cost." (See Record, p. 2, 3 and 4.)

To this petition the defendants in error filed a general demurrer. (Record, p. 5).

The court overruled the demurrer and, the parties abiding their demurrer, granted a peremptory writ of mandamus, allowing in said order this writ of error. (Record, p. 7).

The cause is now brought here for review on writ of error.

ASSIGNMENT OF ERRORS.

Afterwards, to-wit: on the second Wednesday in October, in the same term, before the Justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Mayor and Aldermen of the said city of Quincy, plaintiffs in error, by Geo. A. Anderson, its attorney, and says, that in the records and proceedings aforesaid, there is manifest error, and for causes of error assigns the following, to-wit:

1. The court erred in overruling said demurrer.

2. The court erred in granting said petition and ordering said writ of mandamus to issue.

3. The court erred in ordering the City Council of said city of Quincy to levy and collect a special tax in addition to all other taxes authorized by the legislative acts of 1863 and 1881.

The court erred in the foregoing errors by rendering judgment for defendants in error, and the said Mayor and Aldermen of the city of Quincy pray that for said errors the judgment aforesaid may be reversed, annulled and altogether held for naught, and that the same may be released from said commanding order and restored to all things which they have lost by occasion of said judgment and writ of mandamus.

GEO. A. ANDERSON,

Attorney for Plaintiffs in Error.

BRIEF.

The real question is, has the court the right to order the special tax prayed for in relator's petition.

The proceeding by mandamus can only be used against the officers to compel the exercise of a power vested in them by the laws of the State.

It is well established that the court cannot clothe the city with the powers of taxation; it can only compel the exercise of those powers already possessed.

U. S. v. County of Macon, 99 U. S., 591.
U. S. v. Clark County, 95 U. S., 769.
Heine v. Levee Com'rs, 19 Wallace, 660–1.
Rees v. Watertown, 19 Wallace, 116.

Whatever power of taxation the city may possess or exercise, must have been conferred by grant from the Legislature, either by express statute, or by necessary implication from some express statute.

City of Champaign v. Harmon, 98 Ill., 494.

If a power arise by implication at all, it must arise at the time when the act out of which it is implied takes effect, and cannot arise afterwards by reason of any failure of existing laws to accomplish their supposed objects.

The third clause of Section 4 of the Act of 1863, amendatory of the city charter, contains both an express grant of power and an express limitation on the power granted.

It authorizes an annual levy of fifty cents on the hundred dollars for the payment of the debts and general expenses of the city. At the same time it expressly provides that the levy for those purposes shall *not exceed* that amount.

This law was in force when the bonds now in question were legalized, and was the only authority then possessed by the city to levy taxes for the payment of her debts.

The "debts" mentioned in the clause of the Act of 1863 must undoubtedly be held to include debts subsequently accruing, as well as those existing at the time of the passage of the act, because:

(1) There is nothing in the language of the act upon which to ground any distinction between prior and subsequent indebtedness; and—

(2) Because, unless subsequent debts are included in this clause, the repealing section of the law would have deprived the city of all power to raise taxes for the payment of such subsequent debts. This point seems, perhaps, too obvious to require argument, but it is of controlling importance in the case, with reference to the decision in United States vs. New Orleans.

From the last two propositions it follows that at the time when the subscription and bonds in controversy were legalized, there existed and was in full force an express act of the Legislature making provision for the payment of all city debts, applying to and including this debt as soon as it accrued, and containing, also, a limitation and clear restriction upon the power of taxation for that purpose. Both the grant and the limitation of power contained in the 50-cent clause of the Act of 1863, being prospective, embraced and applied to these bonds the moment they were legalized, and the act undoubtedly expressed the will of the Legislature, that all of the city's debts thereafter created, including these bonds, should be paid out of the 50-cent tax, and not by any other mode of direct taxation. This law, including its restrictive words, being in force when the bonds were issued, "forms a part of the measure

of the obligation of the one party, and of the rights acquired by the other."

Rees vs. Watertown, 19 Wallace, 120–1.

To escape the operation of the Act of 1863 in this case, the relator must show :

1. That the restriction contained in that act has been repealed.

2. That either expressly, or by implication, the Legislature has conferred upon the city an additional power of taxation, which may be evoked by mandamus for the payment of these coupons.

If the restriction has been repealed at all, it can only be by implication from the Act of 1869, legalizing these bonds. Repeals by implication arise only where the latter act is necessarily and irreconcilably inconsistent with the former.

City of Galena vs. Amy, 5 Wallace, 709.
McCool vs. Smith, 1 Black., 470-1.
Fowler vs. Perkins, 77 Ill., 271.
Wray vs. Pen. Township, 94 Ill., 11.

In *Ex parte* Crowdoy (109 U. S., 570,) Justice Matthews says: "Implied repeals are not favored. The implication must be necessary. There must be a positive repugnancy between the provisions of the new laws and those of the old;" and in

Red Rock vs. Haney (106 U. S., 601,) Justice Wood says: "The leaning of the courts is against repeals by implications, and if it be possible to reconcile two statutes, one will not be held to repeal the other."

The Act of 1863 contained, as I have shown, a general provision for the payment of all city debts, present and future, and a limitation upon the annual tax levy for that purpose.

The Act of 1869 merely authorized the creation of a new debt. These acts are not necessarily, or even apparently, inconsistent; for it may have been the intention of the Legislature that the new debt should be paid—like all the other debts of the city—out of the proceeds of the 50-cent tax, and the other resources of the corporation arising from licenses and other indirect tax, authorized by her charter. The relator does not allege that the revenues of the city, from above mentioned sources, have been insufficient to meet these bonds except for the year ending March 31, 1885, when all of the city's revenues, above its necessary current expenses, have been tied up by mandamus orders upon certain other judgments obtained against the city on other indebtedness, extending over past years, during which time the city might have paid them, but, owing to the unsettled state of litigation as to their validity, allowed them to accumulate; and it cannot be supposed that the Legislature hinged its intention upon such a contingency. Although the funds thus provided may in fact have proved insufficient it cannot affect the question. Laws not unfrequently fail to effect their purposes, but this has never been held to be a ground for varying their construction, and still less for judicially dispensing with their express limitations.

To create a repeal by implication, it must appear that the Legislature in passing the Act of 1869 *intended* thereby to repeal, *pro tanto*, the restrictive clause of the act of 1863, for there can be no repeal of a law without a legislative intention to that effect.

Such intention cannot be implied in this case without assuming that the Legislature foresaw that the existing provisions of law would prove wholly inadequate to the payment of this debt, and therefore intended that a special tax should be levied for

that purpose. But there is nothing in this record, or out of it, that can justify the court in making this assumption. The city had other resources besides the 50-cent tax, applicable to the discharge of its debts. What view the Legislature took of the prospective financial situation of the city, is a matter which certainly cannot be determined by any thing in the record; nor are there any practicable means of judicially ascertaining what view, if any, the legislative body took of the future of Quincy when the Act of 1869 was passed. The intention of the general assembly must be found in its enactments. It will not do for the courts to assume that the law-makers entertained a particular notion about the future financial ability of the city, and to make that mere assumption a ground for practically repealing a positive statute.

The much safer position is that the Legislature regarded the provision made by the then existing laws as sufficient for the payment of the city debts, including *this debt*, and *therefore* did not see fit to remove the existing restrictions, or to create a special tax for the payment of these bonds.

Supervisors v. U. S., 18 Wallace, 81.

This view is stronger in the present case than in any other case I have been able to find, from the fact that the Legislature did not authorize the debt, but simply legalized an act already done by the city. The city, in voting the subscription, could not have implied any intention or power to extend its charter limit in paying the bonds, and the legislative act of 1869 only legalized what the city had already done.

Section 23 of Article 3 of the Constitution of Illinois of 1848, under which the Illinois Legislature of 1869 were acting, provides that "no private or local law which may be passed

by the general assembly shall embrace more than one subject, and that shall be expressed in the title."

The title of the act of 1869 referred to, "An act to legalize the act of the City Council of the city of Quincy, Illinois, subscribing to the capital stock of the Mississippi and Missouri Air Line Railroad Company," shows but one subject expressed and one intention aimed at—the legalizing of an act already performed by the city in incurring a debt for the payment of which the Legislature had already given her power.

If the city had possessed the power to have made the subscription when she voted the indebtedness, without any further legislative grant, certainly the bondholders could not look beyond the 50-cent charter limit. Not having this power, the legislature conferred it by legalizing the act after the subscription was made.

Now, if we separate the legislative act into the *authority* to *incur* the indebtedness, and the *power to raise revenues to pay* the indebtedness, the application seems more forcible, for the reason that if the city already had ample authority to raise the necessary revenues to pay off the indebtedness, the latter feature of the legislative intent would be wholly unnecessary.

When, as in the present case, the city had special charter powers for raising money to pay such indebtedness as this, and with such powers voted the subscription, and afterwards, on learning that she had no authority for incurring the debt, although she did have authority to pay it when legally incurred, procured the Legislature to legalize her act, it seems the Legislature only intended to supply what was wanting at the time the subscription was made, namely, the authority to incur the debt.

Had the pre-existing laws made no provisions for the payment of this debt, the case would then have been quite differ-

ent. The present case is clearly distinguishable from United States vs. New Orleans (98 U. S., 381). The principle of that case is summed up in the citation from Loan Association vs. Topeka (20 Wallace, 660), as follows:

"That when the Legislature of a State authorizes a county "or city to contract a debt by bond, it intends to authorize it to "levy such taxes as are necessary to pay the debt, unless there is "in the act itself, or in some general statute, a limitation upon "the power of taxation which repels such inference" (p. 394). And again (p. 395): "Indeed, it is always to be assumed, in "the absence of clear restrictive provisions, that when the Leg-"islature grants to a city the power to create a debt, it intends "that the city shall pay it, and that the payment shall not be "left to its caprice or pleasure."

It is apparent from the language of the court:

(1) That the implied power of taxation, in these cases, depends upon a supposed *intention* of the Legislature, inferred from its presumed intention that municipal debts shall be honestly paid.

(2) That this inference is repelled when there is a "limitation" or "clear restrictive provision" to the contrary.

(3) That this "limitation" or "restrictive provision" may be either in the act authorizing the debt, or in a general statute outside of it.

The case further holds that the city of New Orleans, by the terms of its charter, possessed powers of taxation not expressly limited, and commensurate with all the corporate privileges and duties imposed or conferred upon it by law.

The present case, therefore, differs from the case of U. S. vs. New Orleans in these essential particulars:

1. That the Act of 1863 had made express and definite provision for the payment of all the debts of the city, including *this* debt.

2. That the Act of 1863 contained a "limitation" and "clear restrictive provisions" upon the power of direct taxation to be exercised by the city for the payment of her debts, including this debt.

3. That the charter of New Orleans, as construed by the court, conferred an indefinite power of taxation; while the act of 1863 expressly and carefully confines the taxing power of Quincy to specific amounts for specific purposes.

The current of authority is very strong against the doctrine of implied powers of municipal taxation.

Cooley on Taxation, 200, 209.
2 Dillon Munic. Corp., secs. 763 (605), 770 (610).
Chesnutwood *et al.* vs. Hood, 68 Ill., 139.

And in Loan Association vs. Topeka, 20 Wal. 663, Justice Miller says that of all powers conferred upon government, that of taxation is most liable to abuse.

And the court in the New Orleans case carefully avoids maintaining that doctrine except in cases where no express provision is made for the payment of the debt; and the court, in the clearest language, disclaims any implied taxing power against express statutory limitations or restrictions. It is going quite far to imply so high a power as that of taxation without express law; to imply it *against* express law is, as we think, a plain invasion of legislative province.

We regard it as well settled by decisions that a mere grant of authority to contract a debt cannot, by implication, repeal a pre-

existing charter limitation upon the power to raise taxes for the payment of debts.

Shackelburg vs. Guttenburg, 39 N. J. L., 660.
U. S. vs. Burlington, 2 Am. Law Reg. (N. S.), 394.
Leavenworth vs. Norton, 1 Kan., 432.
Burnes vs. Atchison, 2 Kan., 454.
Clark vs. Davenport, 14 Iowa, 494.

The implied power of taxation recognized in the New Orleans case arises upon two presumptions, viz.:

1. That the Legislature, when it authorized the creation of the debt, intended that it should be honestly paid.

2. That inasmuch as no express grant of the power of taxation to pay that debt was *made* or *limited* by law, the presumption is that the Legislature intended that a power of taxation commensurate with the necessity of providing for the debt should be exercised by the city.

This latter presumption obviously fails to arise when, as here, the legislative will has been expressed as to the extent of taxation to be exercised for the payment of all debts, and especially when this expression includes a positive limitation upon the power.

The case of U. S. vs. County of Macon (99 U. S., 582) is, in principle, identical with the present case. The provisions authorizing a special tax for the payment of the bonds, together with the general statutes in force at the time, are held to be the measure of taxation, although in fact, wholly inadequate even to keep down the interest. If there can be any question as to the effect of this decision, it must arise upon the following language of the court: "When the act to incorporate the Missouri and Mississippi Railroad Company was passed, the power of

counties in the State of Missouri to tax for general purposes was limited by law to one half of 1 per cent on the "taxable "value of the property in the country. * * * If there "had been nothing in the act to the contrary, it might, per- "haps, have been fairly inferred that it was the intention of the "Legislature to grant full power to tax for the payment of the "*extraordinary* debt authorized to an amount sufficient to meet "both principal and interest at maturity."

On this passage it is to be remarked:

(1) That it is not a decision, nor even diction, but a mere *quære.*

(2) The very hesitation about the limitation, conveyed in this language of the opinion, is obviously based upon a doubt whether the payment of the extraordinary debt arising out of a railroad subscription, was one of the *general* purposes covered by the general statute. It is not intimated at all that if the debt in question were within the general statute, the limitation of that statute could be disregarded.

(3) But in the present case no such question can arise. The law of 1863 expressly mentions and holds within its limitation, the payment of all the debts, as well as of the general expenses of the municipality. It makes no distinction between debts, present and future, ordinary and extraordinary. It enacts in the most positive terms that the annual levy of taxes for the payment of the debts and general expenses of the corporation shall be at a rate "not exceeding" 50 cents on the $100, and there is not a syllable in the act indicating an intention to confine its operation to any particular kind of debt.

(4) Suppose that the proceeds of the tax levied, under the 50-cent clause of the Act of 1863, for the year in which these

coupons matured, had been ample for the payment of all the debts of the city, the coupons included, becoming payable in that year, as well as of all her general expenses, and that the proceeds of this tax remained in the corporate treasury—suppose that under these circumstances a mandamus was prayed commanding the city to pay these coupons, out of the proceeds of that tax, would it not have been utterly absurd for the city to have set up in defense that the proceeds of the 50-cent tax were not applicable to the payment of the coupons, and that a special tax must be levied? It is perfectly clear then, that these coupons are "debts" for the payment of which the law of 1863 provides; and if they are thus within the *grant* of power of taxation, created by that law, it necessarily follows that they are within *the limitation annexed to the grant* by the very terms of the statute. It is impossible, therefore, to elude the operation of this law when any supposed distinction arises like that intimated by the court in the passage above cited. The payment of this debt is within the "clear restrictive provision" of the act of 1863, and hence upon the principles announced, both in the Macon county case, and in the New Orleans case, an implied power of special taxation cannot be judicially asserted.

The position of the relator cannot then be maintained, unless the court will go much further than the Supreme Court has gone in the direction of implied powers of taxation. In the New Orleans case the conclusion reached was heard, as we have seen, upon two assumptions, viz: First: That the Legislature intended that the debt should be paid; and second, that in the absence of any express provision or limitation upon the subject, the Legislature intended that a sufficient special tax would be raised. But in this case to reach a similar conclusion the chain

of presumption must be much more extensive; it must be presumed:

1. That when the Legislature passed the legalizing act of 1869, it intended to do more than merely legalize that part of the city's act, for the doing of which the city had no authority.

2. That when the act of 1869, legalizing these bonds, was passed, it was certain, or at least highly probable, that the resources of Quincy, under its then existing laws, were, or would be inadequate for the payment of this debt.

3. That the Legislature entertained the opinion that, under the act of 1863, the revenues of the city would prove to be inadequate to pay these bonds.

4. That in view of this anticipated state of things, the Legislature intended that the restriction of the Act of 1863 would not operate as to these bonds.

5. That the Legislature conceived that the law of 1863 would, as to these bonds, be disregarded accordingly, without any legislative intent to that effect being even hinted at on the statute book. Where is the evidence, where the authority, for this spring of assumptions? When did the courts undertake to repeal a statute by thus piling hypothesis on hypothesis? Repeal by implication, must, as we understand it, be based upon something very different from a series of conjectures.

If it were the fact—as, for aught that appears in this record, it may be—that the 50-cent tax authorized by the law of 1863 has been at all times adequate to provide for the payment of the municipal debts, no one would have supposed for a moment that the limit of that *law* could be exceeded, or special taxation ordered by judicial authority. In reality, then, the power of special taxation claimed in the case must be implied, if at all,

from the supposed *inadequacy* of the statute to accomplish its declared purposes; and this, again, must be upon the supposed principle that whenever a power conferred, and limited, by express legislation, originally is, or ultimately becomes, inadequate to its purpose, the courts may, by that doubtful offspring of legislation called implication, remove the limitation and enlarge the grant so as to make it sufficient to accomplish the end of its creation. This is simply amending statutes by judicial authority.

If a power can be implied on the ground of the inadequacy of legislation, the court must first determine that the express power is insufficient; then the extent of the insufficiency; then that the insufficiency is permanent, and not the outgrowth of a temporary matter; and then devise and put in operation the necessary remedial remedy.

As long as this statute of 1863, covering as it does the entire ground of direct taxation in the city of Quincy, remains unaltered and unrepealed, the inference seems irresistible that the legislative judgment continues to regard it as sufficient for its purpose, and that the legislative will requires it to be obeyed. No one will pretend that, at the time of the passage of that act, a court could have reviewed the action of the Legislature, pronounced the law inadequate, and remedied its deficiencies by an implication of additional powers. And if the law, originally sufficient, has become, by increase of the debt, or by change of circumstances, or by enforced payments at once of accumulated debts, insufficient for its purposes, where does the court find its authority to change the law so as to adapt it to the altered condition of the times? Is it for the Legislature alone to judge both of the necessity and of the character of the amendment to be made, if amendment be required? It does not even follow, be-

cause the law may have become inadequate, that the remedy which the Legislature would apply would be found in an increase of direct taxation. Other resources might be found, and other ways of increasing the municipal revenue might be selected. The whole question is one of purely legislative cognizance. If these creditors cannot be paid out of the funds provided by existing laws, then appeal should be to the Legislature, and not to the courts.

The Macon county case is a direct authority against the doctrine of implying powers, from the mere inadequacy of powers expressly conferred.

In that case the resources arising from the general and special taxes authorized by law sufficed to pay only a small fraction of the interest upon the bonds; yet the court held that the statutory limit could not be exceeded.

It should be observed that if this mandamus can issue, it must rest upon the ground that the city already possesses the implied power of special taxation which the writ is to put into operation. Hence the City Council might exercise that power without mandamus. It would follow, then, in any case where the powers of taxation, conferred and limited by charter, prove inadequate to the corporate purposes, the city authorities might of their own motion, since they alone can determine what are their necessary expenses, determine the extent of the inadequacy, and assume and exercise such further powers as might be deemed necessary. What the practical result of such a doctrine would be, I may safely leave the court to inquire.

And again: If this case is held to be within the rule of United States vs. New Orleans, then it must follow that special powers of taxation are to be implied wherever express powers

prove insufficient as to *any* corporate purpose; for the reasoning of the court in that case is applied equally to all corporate purposes. Hence it will follow that charter limitations may be disregarded in all cases where they prove too narrow to supply funds for the expenditures of the corporation; and yet these charter limitations are, in too many cases, the only protection of the tax-payer against practical confiscation.

We do not, of course, question the authority of the New Orleans case, though we think the doctrine of implied powers of taxation is carried in that case to the very verge of danger. But to imply a power from the *absence* of express power is one thing; to imply it from the *inadequacy* of the power which the Legislature has seen fit to grant, and in defiance of express statutory prohibition, is another and far more dangerous thing. We submit that this cannot be done without utterly confounding all distinctions between judicial and legislative authority.

It will be urged, no doubt, that our construction of these laws involves a hardship to the creditors. But the purchasers of these bonds were bound to take notice of the legislation under which they were issued (Macon County case, 99 U. S., 590).

"The mischief of a strict construction is easily obviated by "the Legislature; but the mischief of a literal construction "may be irremediable before it can be reached." (Cooley on Taxation, 210.)

"Though the power delegated for the payment of these debts "may have proved inadequate, and it may be convenient and "just that they should be made sufficient, yet, as we have seen, "it is not within the scope of judicial authority to eke them out "by dubious presumptions. Creditors whose rightful claims "cannot be satisfied by their exercise must seek further aid

"from the Legislature, on whose faith they may safely rely. "The creditors of the State itself stand secure upon this basis." (Shackleton vs. Guttenberg, 39 N. J. L., 665.)

I have endeavored to show that the Macon County case cannot be distinguished from the case at bar. If it be otherwise, then it follows the Supreme Court of the United States has not decided the question now presented. If that be so, it seems to me that the authority of the case of Binkert vs. Jansen (94 Ill., 283) decided by our own Supreme Court, upon this same question, together with the authorities I have cited upon the precise point of this case, corroborated as they are by numberless decision affirming the rule of strict construction of taxing powers, ought to be decisive of the question, especially as the reasoning of the courts seems to be unanswerable and conclusive.

GEO. A. ANDERSON,

City Attorney, for Plaintiffs in Error.

IN THE

SUPREME COURT

OF THE UNITED STATES,

OCTOBER TERM, 1884.

No. 1083.

THE MAYOR AND ALDERMEN OF THE CITY OF QUINCY, *Plaintiffs in Error,*

vs.

THE UNITED STATES, *ex relatione* PETER A. H. JACKSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

BRIEF OF DEFENDANTS IN ERROR.

CARL E. EPLER, Attorney for Defendants in Error.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

STATEMENT OF THE CASE.

Suit was brought in the court below by the United States, on the relation of Peter A. H. Jackson, to require the City Council of the City of Quincy, by *mandamus*, to pay a judgment, recovered against said city by said relator, by the levy of a special tax. Said cause was, on motion, consolidated with two other proceedings of a like nature, upon similar judgments had by Isaac H. Arthur and Charles Moran, respectively, against said city, (Transcript 5, 6,) but, as each of the last named judgments were for less than $5,000, the writ of error was prosecuted to reverse the mandamus order only as to the judgment of relator, Jackson.

The petition, which under the Illinois practice takes the place of the alternative writ, avers, in substance, as follows, to-wit:

That relator, on June 4, 1884, recovered a judgment against said city for the sum of $9,546.24, which is still in force and unpaid, and that said city, on demand, refused to pay the same. (Transcript, 2, 3.)

That said judgment was had upon certain coupons of certain bonds of the City of Quincy, duly issued by said city in payment of its subscription to the capital stock of the Mississippi and Missouri River Air-Line Railroad Company, and that said bonds recite that they are issued by virtue of an order of the city council of said city, passed August 7, 1868, and of an act of the General Assembly of the State of Illinois, approved March 27, 1869, legalizing the act of said council in making such subscription; that said bonds were duly issued by said city in the year 1870, and that it, therefore, became the duty of said city to pay the interest coupons attached thereto as they became due and payable. (Transcript, 3.)

That there are no funds in the treasury of said city out of which said judgment can be paid.

That the special charter of said city was amended by an act of the legislature, approved February 14, 1863, providing that there should be levied on all real and personal property within the limits of said city, not exceeding fifty cents on each one hundred dollars per annum of the annual assessed value thereof. (Transcript, 3.)

That an act of the General Assembly of said State, approved and in force May 30, 1881, gave said city of Quincy power to levy on its taxable property for all corporate purposes, other than for schools and the interest on its registered bonds, not exceeding in any year the rate of one per cent. of the equalized assessed valuation of such taxable property. (Transcript 3.)

That the revenues of said city for its fiscal year ending March 31, 1885, to accrue from the taxes leviable under the last named act, its licenses and other sources of revenue, after paying therefrom its necessary current expenses for said year, and the sum of $20,000, and any surplus then remaining

above necessary current expenses, on certain other judgments had on its debt-funding bonds, in pursuance of certain mandamus writs, will not suffice to pay relator's said judgment, interest and costs. (Transcript 3.)

That relator is therefore entitled to have said city levy a special tax, in addition to the other taxes it may levy by law, to satisfy his judgment, interest and costs.

That relator has no other remedy but by writ of mandamus.

That said city council be summoned to answer said petition, and be ordered to levy such a special and additional tax, and to apply the same, when collected, to pay the judgment, interest and costs aforesaid. (Transcript, 4.)

To this petition, defendants below, here plaintiffs in error, filed a general demurrer. (Transcript, 5.)

The court overruled the demurrer, and, upon the defendants abiding thereby and refusing to answer, an order was made awarding a peremptory writ of mandamus, commanding the levy of a special tax as prayed for in said petition. (Transcript 6).

Said order also allowed a writ of error to this court, but not to operate as a supersedeas, on the filing of a proper bond for costs. (Transcript 7).

The demurrer being overruled and abided by, the averments of the petition are to be taken as true.

The act under which said bonds were issued, reads as follows:

An act to legalize the act of the City Council of the City of Quincy, Illinois, subscribing to the capital stock of the Mississippi & Missouri Air Line Railroad Company.

§ 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That the acts of the City Council of the City of Quincy, from June 2, A. D. 1868, to August 28, A. D. 1868, in ordering an election on the proposition to subscribe the sum of one hundred thousand dollars to the capital stock of the Mississippi & Missouri River Air Line Railroad Company, and the subscription to said stock, and all other acts of said Council in connection therewith, are hereby legalized and confirmed.

§ 2. This bill shall be in force from and after its passage.

Approved March 27, 1869.

3 Pri. Laws Ill., 1869, p. 376.

The part of the act of 1863 amending the special Charter of Quincy, in regard to the rate of taxation for general purposes, is as follows:

An act amendatory of the several acts relating to the City of Quincy, to provide for raising a revenue therein, and regulating costs arising under the charter and ordinances of the city.

§ 4. The City Council of said city shall have power to levy and collect, annually, taxes on real and personal property within the limits of said city, as follows: * * * * * * * * * * * on all real and personal property within the limits of said city, to pay the debts and meet the general expenses of said city, not exceeding fifty cents on each one hundred dollars per annum on the annual assessed value thereof. * * * * * *

Approved February 14, 1863.

Pri. Laws Ill., 1863, p. 172.

The single question presented by the record is whether relator is entitled to a special tax to pay his judgment.

BRIEF.

The city of Quincy is operating under a special charter granted January 30, 1857,

Pri. Laws Ill., 1857, p. 156,

and confirmed by an act of January 26, 1859,

Pri. Laws Ill., 1859, p. 252.

The bonds, from which the coupons merged in the judgment in question were detached, were issued under authority conferred by the act of March 27, 1869.

3 Pri. Laws Ill., 1869, p. 376.

Quincy vs. Cooke, 107 U. S., 549.

The power to create the debt, thus conferred, carried with it the power and obligation to pay the same by taxation, no other means being provided.

On demand being made, it was the duty of the city council to pay the judgment, by the levy of a tax, if the funds in the city treasury were insufficient for that purpose.

City of Cairo vs. Everett, 107 Ill., 75.

It is settled doctrine in this court that by the grant of legislative authority to a municipality to contract an extraordinary debt by the issue of negotiable securities, the power to levy taxes sufficient to meet, at maturity, the obligation to be incurred, is conclusively implied, unless the law which confers the authority, or some general law in force at the time, clearly manifests a contrary legislative intention.

Ralls County Court vs. United States, 105 U. S., 733.

United States vs. New Orleans, 98 U. S., 381.

Loan Association vs. Topeka, 20 Wall., 655.

United States vs. County of Macon, 99 U. S., 582.

In the case at bar, there is no limitation in the authorizing act itself. The question in controversy is whether or not the charter limit of one-half of one per cent. of February 14,

1863, applies to the obligation incurred by the city under the authority of the act of March 27, 1869. We contend that it does not for the following reasons:

First. That limitation was upon the exercise of powers then possessed by the city, and could not apply to powers subsequently granted by the legislature to incur extraordinary debts. The very fact that the authorizing act was *after* the charter limit act proves that it conferred additional powers of taxation.

Ralls County Court vs. United States, 105 U. S., 733.

United States vs. New Orleans, 98 U. S., 381, 395.

Butz vs. Muscatine, 8 Wall., 575.

Commonwealth vs. Pittsburg, 34 Pa. St., 496, 523.

Commonwealth vs. Commissioners of Alleghany Co., 40 Pa. St., 348.

Commonwealth vs. Perkins, 43 Pa. St., 400.

Dill. Mun. Corp., 3rd Ed., § 741.

Second. The limitation was imposed upon the city council, not upon the legislature. The legislature was free to act and could afterwards confer additional taxing power upon the city by implication, as well as by express provision.

United States vs. New Orleans, 98 U. S., 397.

Amey vs. Allegheny City, 24 How., 364.

Commonwealth vs. Pittsburg, 34 Pa. St., 523.

Commonwealth vs. Commissioners of Allegheny Co., 40 Pa. St., 348.

Cope vs. The City of Charleston, 10 Rich., 451.

Third. The limitation was upon the exercise of the power of taxation to pay debts and expenses incurred in the ordinary line of municipal action, which it has been the policy of the State to restrict, and does not refer to extraordinary debts such as are incurred in issuing railway aid bonds.

Ralls County Court vs. United States, 105 U. S., 735-6.

Butz vs. Muscatine, 8 Wall., 580.

Dill. Mun. Corp., 3rd Ed., § 162.

The decision in *Binkert vs. Jansen*, 94 Ill., 283, does not apply to the case at bar. The scope of the bill there was to enjoin the levy of taxes for ordinary municipal purposes beyond the limits fixed by the amendatory act of February 14, 1863. The act of March 27, 1869, authorizing the issue of the M. & M. Air Line Railroad bonds, was not before the court in that case and its effect was not in any way there passed upon.

Even if it be assumed, for the sake of argument, that the opinion rendered in *Binkert vs. Jansen*, had the authorizing act of March 27, 1869, in view, it could not affect the present litigation, for that decision was made in January, 1880, and the bonds in question were issued in 1870. (Transcript 3). And the rights of the parties here depend upon what the law was when the bonds were put on the market as commercial paper.

County of Ralls vs. Douglas, 105 U. S. 728.

Douglas vs. Pike Co., 101 U. S., 687.

The act of May 30, 1881, (Laws of Illinois, 1881, p. 59) in fixing the rate of taxation for general purposes at one per cent., (Transcript 3,) could not affect obligations previously incurred.

Von Hoffman vs. Quincy, 4 Wall., 535.

In *Ralls County Court vs. United States, supra*, it is said that the decision in *United States vs. County of Macon, supra*, should be construed as made in a case where a special tax limitation was contained in the conferring act. The opinion in the Ralls County case seems to be decisive authority on the point now before the court.

ARGUMENT.

It must be conceded that relator is entitled to a special tax to pay his judgment, unless prevented by the restrictive statute of February 14, 1863, which, for convenience, we will call the charter limit act. We contend that the limitation there found does not apply to powers subsequently granted, that its bearing was upon the city council and not upon the legislature, and that it relates merely to the ordinary debts and expenses of the city. The scope of that act is the material inquiry.

Quincy's charter provided in general terms that "The city council shall have power * * * * to appropriate money and provide for the payment of the debt and expenses of the city."

§ 4., Chap. IV., Act January 30, 1857., Pri. Laws Ill., 1857, p. 163.

And that could be done, of course, in the ordinary way by the levy and collection of taxes. The words of the charter limit act of 1863, "to pay the debts and meet the general expenses of the city, &c.," follow and limit the language of the charter in conferring such broad taxing powers. This accounts for the phraseology of the act and shows that only the city's ordinary debts and expenses were intended. This is further shown by a reference to the act of February 16, 1857, (Pri. Laws Ill., 1857, p. 1052) which gave Quincy power "to issue city bonds to any amount not exceeding at one time in the aggregate the sum of $75,000." This act and the provision of the charter above referred to, "manifestly relate to debts and expenses incurred for ordinary municipal purposes," as was held in *Quincy vs. Cooke*, 107 U. S., 551.

The charter limit act was before this court in *Von Hoffman vs. Quincy*, 4 Wall., 535, where it was held not to restrain the city's power and duty to tax to pay judgments, on bonds previously issued under prior laws, as such a restriction would impair the obligation of a contract.

The restrictive force of the charter limit act, then, was upon the *after* exercise of powers the city already had and enjoyed on February 14, 1863. It plainly could not refer to or limit powers not given to the city by the legislature until after that time. For to do so would bind the hands of succeeding legislatures. This view of the act gives it complete effect according to its plain and natural meaning and effectuates the salutary policy of the legislature in restricting the city's ordinary debts and expenses by limiting its power to tax to pay the same. And this construction of the act was enforced in *Binkert vs. Jansen*, 94 Ill., 283, in 1880.

In 1869 this court held that such a charter limitation, touching the exercise of the power of taxation by a city council, applied to the ordinary course of their municipal action.

Butz vs. Muscatine, 8 Wall., 580.

When the bonds involved in the case at bar were issued and put on the market as commercial paper in 1870, purchasers had a right to rely on that decision. Had there been any later decisions to the contrary by the Supreme Court of the State of Illinois, they could not affect the rights of such holders.

And in *Ralls County Court vs. United States*, 105 U. S., 736, a similar limitation was held to refer to the ordinary expenses of the county, which it had always been the policy of the State to restrict.

The present case is clearly distinguishable from that of *United States vs. County of Macon*, 99 U. S. 582, in that there the tax limitation was in the conferring act itself, and expressly restricted the power to tax to pay the extraordinary debt allowed to be created, while here the charter limit of 1863 relates only to the ordinary debts and expenses of the city, and the act authorizing the bonds in question was passed years afterward.

In the Macon County case (p. 590,) it is said that had there been nothing in the act to the contrary, the power to tax to pay both principal and interest of the extraordinary debt at maturity, might have been fairly inferred. And in the Ralls County Court case, *supra*, it is said that the Macon County decision is authority only where the limitation appears in the conferring act.

We further confidently rely on the position that the authorizing act of March 27, 1869, being subsequent to the charter limit act of 1863, conferred additional powers of taxation upon the city, and that the grant of taxing power is expressly implied in the authority to create the debt.

United States vs. New Orleans, 98 U. S., 381,

where (on page 395) it is said that "such implication cannot be overcome except by express words excluding it," and again (pages 396-7) that the implication was not affected by the earlier statutes of 1852 and 1853 restraining cities and towns from creating any indebtedness, without providing at the same time for the payment of principal and interest, as those statutes were limitations, not upon the legislature, but upon cities and towns.

In the Ralls County Court case, *supra*, it is said (page 736): "The power to tax in such cases is not an implied power, but a duty growing out of the power to contract. The one power is as much express as the other."

A similar question was raised in

Commonwealth vs. Pittsburg, 34 Pa. St., 523,

decided in 1859, where the following language was used by the court: "If there was any restriction upon the rate of taxation before, which we do not say, it was certainly removed by the act of February 7, 1853, so far as relates to the levy of a tax for the payment of the principal and interest of the debt incurred by the subscription. When the legislature gave the power, it gave with it everything which was necessary for its exercise, and repealed every statutory prohibition of its enjoyment."

In *Commonwealth vs. Commissioners of Allegheny Co.*, 40 Pa. St., 348, decided in 1861, a question exactly similar to the one here at issue was raised. The limitation there relied on was found in an act of April 15, 1834, which declared "That no tax in any county, shall, in any one year, exceed the rate of one per cent. on every dollar of the adjusted valuation." An act of 1843 gave authority to make the subscription, and a further act of 1853 power to borrow money to pay for subscriptions made and to provide for payment of the money borrowed. The action was mandamus to compel the levy of a

special tax to pay certain judgments on coupons of the bonds issued. The one per cent. limitation was set up in defense. The decision is so squarely in point that we quote from it, as follows:

"Every question touching the power of the legislature to authorize county commissioners to make such a subscription as was made in this case, and the exercise of the power by such functionaries has been heretofore decided, and the only question before us at this moment, is the effect of the grant of authority to create the debt and to provide for the payment of interest in view of this limitation. Did it enlarge the power to assess taxes to meet the demand? That it did we cannot doubt. The limitation was upon the taxing officers. It was made to control them, and could not control the legislature. Nothing but a constitutional mandate could have that effect, and, as it must be conceded now, there was no such barrier in the way of legislation on the subject of municipal corporations, that, therefore, was not in the way. The limitation was but the expression of the sovereign will towards subordinate authority; it had no effect on the legislature itself. There being no constitutional prohibition to a change of the law on this subject, the legislature was free to dispense with the limitation entirely, or so far as to include within it the superadded duty of providing for new liabilities. This could as well be done by requirements totally inconsistent with the limits fixed as by express provision. Where not expressed it may be implied, whenever it is clearly and necessarily incident to the duty enjoined in the legislative mandate or authority.

* * *

"They are required by the statute to make provision for the payment of interest, and of course in the manner they contracted to pay it; that was semi-annually. This was to be done in the usual mode adopted by counties. That certainly was by taxation, as that is the ordinary resource of municipal bodies. The respondents so understood it, as is evident by this plea, for in it they only set up the limitation as operating to prevent them from so raising the necessary amount. Now the legislative mandate was to make provision in the ordinary way; that is, by taxation, without regard to any limitation whatever, excepting only the amount needed for the payment of the interest. That is in conflict, say the respondents, with a former act limiting the amount of the an-

nual tax. What of that? The legislature are to be presumed to have known that, and, notwithstanding, required the performance of a duty inconsistent with it. If the county made the subscription, she had the question of limitation in her own hands. The language was in effect, 'if you subscribe you must provide money to pay interest, and if it exceeds the limits fixed for your protection you must take the responsibility for that.' The county did subscribe, and the act referred to was undoubtedly an implied repeal of the limitation which stood directly in the way of the performance of the duty enjoined. To hold otherwise, would be to allow the clearest requirement of the law to be defeated, and a palpable fraud to be committed upon bondholders who advanced their money on the faith of the authority given, and duty enjoined as a consequence thereof, by the legislature. A construction leading to such results cannot be made in this case—the law is too plain for that."—*Ibid*, pp. 350-1.

The above was good law when the bonds in question were issued in 1870, and is a decision on the very point now raised. We take it that the question of the right to a special tax in such a case as the one at bar was settled in this court by

Ralls County Court vs. United States, 105 U. S., 733.

If the construction contended for by counsel for plaintiffs in error be correct, then the judgment of relator is barren of results. The creditor can only depend for payment upon the caprice of the city—a city the history of whose bonds may be read in the decisions of courts. His chances of payment would vary with every fluctuation in municipal revenues and expenses. The situation would be like that depicted in *Butz vs. Muscatine*, 8 Wall., 581. The city might exhaust all its resources of revenue in current expenditures and the bondholder get nothing.

That the charter limit of one-half of one per cent. yielded too meager a revenue for even the city's ordinary needs, is shown by the passage of the act of May 30, 1881 (Transcript 3), allowing the levy of one per cent. for general purposes. And that law was passed with especial reference to the city of Quincy, after the decision in *Binkert vs. Jansen*, 94 Ill., 283, in 1880, enjoined the levy of taxes for ordinary purposes beyond the charter limit of 1863.

The legislature in authorizing the issue of the bonds in question in 1869 never intended that the rights of the bondholders should rest on so insecure a basis. That there is no money at hand to pay the judgment and that resort must be had to a special tax, is no fault of the judgment creditor. The city took that risk in making the subscription and issuing the bonds.

In insisting on a special tax to pay relator's judgment we only call for the application of principles well settled in this court, and we feel confident that the writ of error will be dismissed and the judgment of the court below affirmed.

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